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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,330	03/26/2004	Stefan Vilsmeier	SCHWP0187USA	1366

7590 12/07/2009
Don W. Bulson
RENNER, OTTO, BOISSELLE & SKLAR, LLP
Nineteenth Floor
1621 Euclid Avenue
Cleveland, OH 44115-2191

EXAMINER

ROZANSKI, MICHAEL T

ART UNIT	PAPER NUMBER
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3768

MAIL DATE	DELIVERY MODE
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12/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/811,330</p>	<p>Applicant(s) VILSMEIER ET AL.</p>	
	<p>Examiner MICHAEL T. ROZANSKI</p>	<p>Art Unit 3768</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Eric F Winakur/
Primary Examiner, Art Unit 3768

Continuation of 11. does NOT place the application in condition for allowance because: In regard to Krause, Applicant argues that because images are taken before surgery the images cannot be taken "without removing the patient from the position for treatment." However, as mentioned in the previous Office Action, the patient is in a supine treatment position for surgery and in a supine imaging position for imaging. Thus, the treatment and imaging positions are the same and the patient is not removed from this position even though imaging occurs before treatment. The position would be different if, for example, imaging occurred in a supine position while treatment occurred in a prone position.

In regard to Vilsmeier, Applicant argues that since the Examiner used the term "appears" when describing the teaching, that such cannot be relied upon for anticipation. However, the Examiner had used the term because, as it was stated in the response, the term "projecting" is not specifically used in the specification. Rather, it was meant to suggest that the reference discloses the steps of the claim even though a particular term was not used. For example, Applicant's specification describes projection of the model onto the detection data as manual or automatic shaping between the model and the detection data and corresponds to shifting, deforming, or rotating the model based on information of anatomical landmarks and structures [0032]. The specification describes automatic image fusion by identifying particular anatomical features and registering and/or fusing image data such as DRR images [0044]. Likewise, the reference describes manual shifting, rotating, stretching, or compressing the model based on natural or artificial landmarks from detection data (col 3, lines 28-46). It describes automatic image fusion methods based on identifying particular anatomical features (col 3, lines 47-49). It also describes registering and/or fusing image data such as DRR images (col 3, lines 50-53). Therefore, while the response used the term "appear," it is apparent that the reference sufficiently discloses the claimed steps.